IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4545 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PURSHOTTAMBHAI BABABHAI

Versus

ASHOK MILLS CO LTD

Appearance:

1. Special Civil Application No. 4545 of 2000

MR TR MISHRA for Petitioner No. 1

MR DEEPAK V PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 24/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the legality and validity of the order dated 23rd August 1999 passed by the Industrial Court by which Appeal No.50

and 51 of 1998 came to be disposed of.

2. The petitioner workman was working with the respondent Company. By issuing a chargesheet dated 4.9.89, it was alleged that on 2.9.89 at about 11.45 p.m., the petitioner came to the factory and abused the Supervisor Shri C.K.Shah, snatched his glasses and tried to assault him. Shri Shah tried to pacify him and asked him to leave the office, but he sat down on the chair and got excited and used abusive language. On the basis of the said charges, the petitioner was called upon to give his explanation and remain present before the Management with his witnesses. Pursuant to the inquiry conducted, the respondent found the charges to have been proved and the Factory Manager in discharge of his powers under the Standing Orders passed an order of dismissal of the petitioner from service on 4.10.89.

3. The petitioner challenged the said action of the Management before the Labour Court by filing T.Application No.1/90. Before the Labour Court, the Management led further evidence in support of the charges. The Labour while upholding the findings arrived at during the domestic inquiry found that the punishment is excessive and accordingly directed reinstatement of the petitioner with 25 per cent backwages. The respondent being aggrieved by the said order of the Labour Court dated 13th August 1998 appealed against the same before the Industrial Court. The petitioner also to the extent the said order was against him, filed appeal before the Industrial Court and both the appeals being Appeal Nos.50 and 51 of 1998, came to be heard together and disposed of by the Industrial Court by its impugned order dated 23rd August 1999. The Industrial Court was pleased to reject the appeal filed by the petitioner-workman being Appeal No.51/98. The appeal of the Management was allowed partially and the order of reinstatement in service with 25 per cent backwages was set aside, but punishment of dismissal was converted into that of discharge simpliciter. The petitioner has approached this Court by way of the preset petition challenging the above mentioned order of the Industrial Court dated 23rd August, 1999.

4. Appearing for the petitioner, learned counsel Mr.T.R.Mishra submitted that the courts below erred in coming to the conclusion that the charges against the petitioner have been proved. He submits that it was not the normal duty hours of the petitioner and therefore, it is not possible to believe that he had been involved in the incident in question. He has also submitted that the

show cause notice was issued by the Factory Manager. The Inquiry was also conducted by the Factory Manager and the Factory Manager also acting as Disciplinary Authority had passed the order of penalty of dismissal from service. He, therefore, submits that this is in violation of the principles of natural justice. In the alternative, the learned advocate for the petitioner has submitted that the order of dismissal was disproportionate to the allegations even if they are taken to have been proved. He submits that the order of discharge would result into extreme penalty against the petitioner and that therefore, the same should be reduced. Learned advocate Shri Mishra placing reliance on the decision of the Hon'ble Supreme Court in the case of Tata Engineering & Locomotive Co. Ltd v. Jitendra Prasad Singh & another, 2001 LLR 80 submitted that the punishment of discharge is harsh and the punishment should therefore be reduced. He has also relied on the decision of the Bombay High Court reported in 2003 (96) FLR 910 (Maharashtra General Kamgar Union v. G.L. Hotels Ltd.) in support of the contention that punishment should be reduced.

5. Appearing for the respondent, learned counsel Shri D.V.Patel has submitted that the inquiry was conducted in consonance with the principles of natural justice and no infringement of any rule or regulation has been pointed out. He submits that the charges having been proved during the domestic inquiry and also having been held to have been correctly proved by the courts below, it is not possible for this Court to interfere with such factual findings in exercise of powers under Article 227 of the Constitution of India. He submits that the penalty imposed was justified in the facts of the case and when the Industrial Court has converted the order of dismissal to that of discharge simpliciter, no further leniency is required to be shown.

6. Having considered the arguments of the learned advocates appearing for the parties, I do not find any infirmity in the order passed by the Industrial Court. The charges levelled against the petitioner were inquired into and through cogent evidence held to have been proved during the course of inquiry. The Labour Court as well as the Industrial Court have also found that charges were correctly proved. Since there was sufficient material on record to come to the said conclusion, it is not possible for this Court to interfere with these findings of fact in exercise of power under Article 227 of the Constitution of India in absence of any suggestion of perversity in arriving at these findings.

7. With respect to the question of disciplinary authority conducting the inquiry himself also, the contention of the petitioner's counsel cannot be accepted. It is always open for the disciplinary authority either to hold inquiry himself or to appoint an Inquiry Officer and have the inquiry conducted through such an agency. There is no rule nor there is any requirement under the service law that the disciplinary authority must hold the inquiry through an inquiry officer. I, therefore, do not find any infringement of principles of natural justice in the disciplinary authority himself conducting the inquiry.

8. With respect to the quantum of punishment also, the Industrial Court has applied its mind and reduced the penalty from that of dismissal from service to discharge simpliciter. In view of the proved misconduct and especially when the Inquiry Officer had also taken into account certain previous incidents involving the petitioner, it is not possible for this Court to further reduce the penalty.

9. On all counts, therefore, I find that the Industrial Court had correctly decided the issues arising before it and the order therefore cannot be interfered with.

10. In the result, the petition is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)